

COUNTY OF SAN DIEGO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject

Open Space Easement Vacations

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I-103

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Purpose

To establish a policy for the granting of approval for the vacation of open space easements granted to the County of San Diego.

Background

Open space easements acquired as a condition of approval of discretionary permits are vacated pursuant to the State of California, Streets and Highways Code, Section 8300 et seq. This section provides the procedure for vacating public service easements which by definition include open space easements.

In certain cases, the easements have proved to be overly restrictive, in the wrong location or no longer needed based on additional environmental studies.

Periodically the Board has received requests dealing with easements which were placed on property for a variety of reasons including:

- 1) environmental mitigation
- 2) lot size averaging/clustering projects
- 3) planned developments
- 4) substandard not a part lots
- 5) voluntary restriction of a project

To assure that the proper course of action is taken, the Board desires that open space easements be vacated only after careful consideration has been given to the original intent of the easement. Because of the variety of open space easements for which requests could be received, the following policy has been established.

Policy

It is the policy of the Board of Supervisors that all or part of an open space easement can be vacated when all the necessary findings are made. The procedure for the vacation of an open space easement requires that the Director of the Department of Planning and Land Use (hereinafter referred to as Director) specifically make a recommendation of approval, conditional approval or denial to the Board of Supervisors. This recommendation is based on the following findings:

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1. That the vacation does not conflict with any of the adopted elements of the County General Plan with respect to location, purpose, and extent. Section 65402 of the Planning and Zoning Law (Section 65000 et seq., Government Code) provides in substance that where a county has adopted a general plan or part thereof which is applicable to the establishment, vacation or abandonment of streets, no real property shall be vacated or abandoned unless the matter has been submitted to and reported by the Director as to conformity with the General Plan or part thereof.

2. That the easement is unnecessary for present or prospective public use as a public service easement as required by Section 8300 et seq. of the Streets and Highways Code.

3. That the vacation complies with the California Environmental Quality Act and State and County Guidelines, and will not have a significant effect on the environment.

In addition to the legal findings listed above, the following criteria are evaluated in vacating open space easements:

1. For easements placed on property for voluntary reasons or in error (and not covered by 2 and 3 below), only the legal findings listed under 1, 2, and 3 above shall apply. Where practical, dedication of an equal amount of open space shall be required.

2. For easements required as part of lot size averaging/ clustering projects and planned developments, a review of the file (to determine intent, developer commitments, planning group statements, etc.) and actions at prior public hearings shall be made to determine if further developments or alteration of the project was to be considered. In most instances, vacations of these easements will be discouraged.

A plot plan shall be submitted showing the intended use of the property being vacated. Further division of property (if permitted by vacating the easement) shall not be allowed when the overall density will exceed original or, if subsequently changed, existing zoning and General Plan densities. Where possible, dedication of an equal amount of open space shall be required.

3. For easements placed on property for environmental mitigation, an environmental review process shall take place to determine the intent and need for the open space. If the request is to correct a mislocated easement, the appropriate easement shall be granted. Otherwise, where possible, dedication of an equal amount of open space shall be required. Any environmental studies required by the easement shall be submitted before the vacation is considered by the Director.

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The discretionary authority given the Director of Planning and Land Use for minor encroachments under Board of Supervisors' Policy I-100 shall be subject to these guidelines in assessing the validity of each request.

Sunset Date

This policy will be reviewed for continuance by 12-31-03.

Board Action

4-16-86 (3)

10-17-89 (54)

12-16-92 (7)

4-14-99 (11)

CAO Reference

1. Department of Planning and Land Use